

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

640 OCTAVIA, LLC,

Plaintiff,

v.

KARL-HEINZ PIEPER,

Defendant.

No. C 18-01047 WHA

**ORDER DENYING MOTION
TO COMPEL AS MOOT
AND VACATING HEARING**


Plaintiff 640 Octavia, LLC, the owner of a four-unit residential building in San Francisco, initiated this action against defendant Karl-Heinz Pieper in February 2018. Based on allegations that defendant frequently had unruly visitors over to his apartment, the complaint asserted claims for unlawful detainer, breach of contract, and private nuisance. In October 2018, plaintiff served a subpoena on Jose Montoya, defendant's roommate and a non-party to this action. The compliance due date was November 8, 2018. After Montoya failed to respond, plaintiff filed the instant motion to enforce the subpoena and for contempt. Apart from the instant motion, plaintiff made no attempt to elicit a response to the subpoena or otherwise inquire into Montoya's non-compliance (Dkt. Nos. 1, 78, 80).

Upon plaintiff's filing of the instant motion, defendant and Montoya met and conferred with plaintiff and complied with the terms of the subpoena by serving objections and responsive documents. In its reply brief, plaintiff acknowledges that Montoya has responded to the subpoena. Although plaintiff no longer seeks enforcement of the subpoena, it argues that it should recover the fees and costs incurred in bringing the instant motion (Dkt. Nos. 80–81). This order disagrees. Imposing attorney's fees on Montoya would be inappropriate given that the amount plaintiff expended on the instant motion could have been avoided had plaintiff made

1 an attempt to communicate with Montoya or otherwise meet and confer. Each side shall
2 therefore bear its own costs and fees related to the instant motion. Plaintiff's motion to enforce
3 the subpoena is otherwise **DENIED AS MOOT**. The January 17 hearing on the motion is
4 **VACATED**.

5
6 **IT IS SO ORDERED.**

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8 Dated: January 2, 2019.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE